85-543

Supreme Court, U.S.
FILED
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CLERK

IN THE

Supreme Court of the United States

October Term, 1985

MANUEL MORENO,

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE MISSISSIPPI STATE SUPREME COURT
TO THE SUPREME COURT OF THE UNITED STATES
IN WASHINGTON, D. C.**

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Attorneys for Petitioner

QUESTIONS PRESENTED

1. Is the trial procedure of the State of Mississippi requiring a contemporaneous objection as it pertains to the Petitioner's confession, a violation of his Fifth Amendment Rights of the United States Constitution against self incrimination as made applicable to the State Courts of the State of Mississippi, a virtue of the Fourteenth Amendment of the United States?

2. Did the lower trial court deny the Petitioner herein his rights against self incrimination by virtue of the Fifth Amendment of the United States Constitution, made applicable to State Courts of the United States Constitution by not allowing him to conduct an inquiry as to the voluntariness of his confession after objection was made in trial and further objection was made for a motion for New Trial as per state procedure of the State of Mississippi? [1]

[1] Both arguments will be argued simultaneously.

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V.

STATE OF MISSISSIPPI,

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PETITION FOR WRIT OF CERTIORARI
TO THE MISSISSIPPI STATE SUPREME COURT
TO THE SUPREME COURT OF THE UNITED STATES

Manuel Moreno hereby respectfully prays that a writ of certiorari be issued to review a judgment and opinion of the Supreme Court of the State of Mississippi entered on or about June 5, 1985 and said petition for rehearing properly filed and denied on or about July 10, 1985.

OPINIONS BELOW

The opinion of the State Supreme Court of the State of Mississippi was designated not for publication. The opinion, however is attached hereto in the Appendix.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257, Subsection 3. The judgment of the State Supreme Court was entered on or about June 5, 1985 and a petition for rehearing was properly denied on July 10, 1985. A timely notice of appeal was filed with the Clerk of the State Supreme Court on or about July 16, 1985

or soon thereafter and this petition for certiorari was filed within ninety (90) days of that date. The Court's jurisdiction is invoked under 28 U.S.C. 1257, Subsection 3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment of the United States Constitution as well as the Fifth Amendment of the United States Constitution concerning statements against statements of self incrimination and the voluntariness of a confession as made applicable to the State of Mississippi pursuant to its Procedural Rules of contemporaneous objection to evidence introduced at trial.

STATEMENT OF THE CASE

The Appellant, Manuel Moreno, a Mexican/American was indicted by the Grand Jury of Pearl River County on or about November 19, 1982 charging him with violation of Miss. Code as Annotated, §41-29-113 Sub. C, Sub. 11, to-wit: having in his possession under his constant controll a controlled substance to-wit, marajuana in the amount of 92,901 grams in violation of the peace and dignity of the State of Mississippi. The Appellant was arraigned on or about January 10, 1983. About March 7, 1983 the consul for the Appellant filed a Notice of Discovery and a motion for Suppression. Subsequently a Motion for Continuance was submitted by the presiding District Attorney but was subsequently withdrawn. The State presented testimony of Sam Bodie who testified to the search of a home occupied by Mr. J. C. Simmons a co-conspirator in this cause and also testified to alledged confession made by the Appellant in which the Appellant admitted his guilt. The State then called J. C. Simmons, the co-indictee who testified at length how he participated in the transfer and delivery of marajuana to his residence and the extent of this participation with the Defendant. The State then called the chief investigator for the Mississippi Crime Lab who testified that the leafy substance was marajuana. (R32). Counsel for the Defendant therein at the close of the case made an oral Motion challenging the voluntariness of the confession and urging the Court to conduct an investigation as to the voluntariness of said confession. The Defendant rest without calling any witnesses and the Jury returned a verdict of guilty. The Defendant was sentenced to a period of 10 years to the Mississippi Department of Corrections and was also fined $30,000.00. The Honorable Presiding Judge Pritchard signed the Judgment of the Jury. The Defense then filed a Motion for New Trial on or about November 26, 1982 which

was overruled. Part of the Motion for New Trial was the alledged Court's failure to conduct an investigation as to the voluntariness of the alledged confession. On March 25, 1983, the judgment of finding him guilty was signed by the Hon. Judge Pritchard and the appeal was taken to the Mississippi Supreme Court and said conviction was affirmed in the Manuel Moreno versus State of Mississippi, Case No. 54,842, affirmed by the Mississippi State of Supreme Court on June 5, 1985 and petitioned for rehearing denied on July 10, 1985.

REASONS FOR GRANTING THE WRIT

This case presents important issues concerning whether or not a Defendant in a criminal trial waives his rights to challenge the voluntariness of a confession, when made during the course of a trial and called to the Court's attention, during the trial and afterwards for a Motion for a New Trial. The Petitioner herein feels that his constitutional rights of self incrimination and the voluntariness of his confession have been violated by State procedure and by the affirmance of the Mississippi State Supreme Court and that the procedure of the State of Mississippi is unconstitutional as applied to the Petitioner herein, that it would not have been a complicated or difficult matter for the State to have conducted an inquiry as to the voluntariness of the Petitioner's confession.

The threshold case to be considered by this Honorable Supreme Court is the case of *Henry vs. Mississippi*, 379 US 443 (1966) where this Honorable Supreme Court stated at Page 448.:

"The Miss. Rule requiring contemporaneous objection to the introduction of the illegal evidence clearly does serve a ligitimate State interest. But immediately aspiring trial judge of the objection, counsel gives the court the opportunity to conduct a trial without using the tainted evidence. If the objection is well taken, the fruits of the legal search may be excluded from jury consideration and the reversal and a new trial avoided."

"But on the record before us it appears that this purpose of a contemporaneous objection rule may have been substantially served by the Petitioner's Motion at the close of the State's evidence asking for a direct verdict because of the erroneous admission of the officer's testimony. For at this stage the trial judge could have called for elaboration of the search and seizure argument and if pursuaded could have stricken the testimony of have taken other appropriate corrective actions. For example if there was sufficient competent evidence without this testimony to go to the Jury the Motion for Directed Verdict might have been denied and the case submitted to

the Jury with the proper worded appropriate cautionary instruction. In these circumstances the delay and to the close of the State's case in presenting the objection cannot be said to have frustrated the State's interest in avoiding delay and waste of time in the disposition of the case."

Consider further what our Honorable Supreme Court has stated in the above captioned case of *Henry vs. Mississippi* at Page 447:

"These justifications have no application where the State ground is purely procedural. The procedural default which is held to barr challenge to a conviction in State Courts, even on federal constitutional grounds prevents information of the federal rights. Accordingly, we have consistently held that the question of when and how default in compliance to the State procedural rules can preclude our consideration of a federal quiestion is itself a federal question. *Covell vs. City of Griffin*, **303 US, 444.**

The undersigned submits to this Honorable Court precisely these same or similar set of circumstances appear in the case at barr.

During trial of Mr. Moreno, there was no objection made initially of the alledged confession made to testify to by Mr. Sam Bodie, the investigator for the Pearl River County Sheriff's Department who introduced and testified as to the contents of the confession of Manuel Moreno. However, at the end of the case when the State rested, Manuel Moreno, the Petitioner herein came forward with an oral Motion to conduct an investigation as to the voluntariness of the confession. The Court considered it and however overruled the Motion and to paraphrase the Court he would allow any evidence to be brought forward concerning the alledged confession, however the Defendant would be subject to full cross examination. In other words, any investigation made into the voluntariness of the confession would not be limited to the confession to itself, buy to all aspects of the trial. As such, the undersigned submits to this Honorable Supreme Court that this was error and that the lower court being apprised of the fact that there was a question concerning the voluntariness of the confession could have easily reopened the case and allowed such an investigation and hearing to have been conducted as to the voluntariness. As such, the lower court and the Supreme Court of the State of Mississippi affirmed, stating that there was a waiver. [2]

The undersigned submits that the failure of the trial Court to conduct such a hearing is possibly a violation of his rights under the famous case of *Miranda vs. Arizona*, 384 US 436 (1966).

The undersigned respectively submits to this Honorable Court that the CONTROLLANT CASE IS *Jackson vs. Denno*, 378 US 368 (1964).

In the present case, under consideration by the Honorable Court, objection was made during the trial concerning the voluntariness of the confession as was that in the *Jackson vs. Denno* case. The undersigned submits to this Honorable Court that as such the lower court was apprised at such fact and should have within a reasonable time or at that time conducted an inquiry as to the voluntariness of the confession as set forth in *Jackson vs. Denno*. The undersigned respectively submits to this Court for its consideration in the case of *Boykin vs. Alabama*, 395 US 238 at Page 394 as follows:

"We think that the same standard must be applied to determine whether a guilty plea is voluntarily made, for as we have said a plea of guilty is more than an admission of conduct. It is a conviction. Ignorance, incomprehension, coercesion, terror, inducements, subtle or blatant threats might be a perfect coverup of unconstitutionality. The question of an effective waiver of a federal constitutional right in a proceedings is of course governed by federal standards."

The undersigned respectively submits to this Court that Manuel Moreno in the lower court clearly asserted his constitutional rights and that he did not waive them. His claim to conduct the hearing as to voluntariness of his confession was presented during the trial level and in subsequent proceedings. As such, the undersigned submits to this Court it was not a waiver under Mississippi State Procedural Rules.

The undersigned respectively submits to the Court the case of *Henry vs. Mississippi*, Supra:

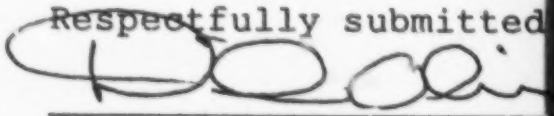
"These justifications have no application where the State ground is purely procedural. The procedural default which is held to bar challenge to a conviction in State Courts, even on federal constitutional grounds prevents information of the federal rights. Accordingly, we have consistently held that the question of when and how default in compliance to the State procedural rules can preclude our consideration of a federal question is itself a federal question."

[2] See Appendix as to Mississippi Supreme Court's affirmance opinion.

CONCLUSION

For the above reasons as stated above, a writ of certiorari should be issued to review the judgment and opinion of the Mississippi State Supreme Court.

Respectfully submitted



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August 12, 1985

APPENDIX

IN THE SUPREME COURT OF MISSISSIPPI
NO. 54,842

MANUEL R. MORENO

V.

Decided June 5, 1985

STATE OF MISSISSIPPI

NOT DESIGNATED FOR PUBLICATION

COURT FROM WHICH APPEALED:	Circuit Court Pearl River County
TRIAL JUDGE:	Hon. R. I. Pritchard, III
ATTORNEYS:	FOR APPELLANT: David Oliver P. O. Box 573 Gulfport, MS 39502 FOR APPELLEE: Marvin L. White, Jr. Special Assistant A. G. for Edwin Lloyd Pittman
CHARGE & SENTENCE:	Possession of Marajuana With Intent to Deliver Twenty (20) Years Plus $30,000.00 Fine
DISPOSITION:	affirmed

BEFORE ROY NOBLE LEE, HAWKINS AND SULLIVAN
HAWKINS, JUSTICE, FOR THE COURT:

Manuel R. Moreno appeals from his conviction of the possession with intent to deliver of more yhan a kilogram of marijuana, a Schedule 1 controlled substance under Miss. Code Ann §41-29-113(c) (Supp. 1982), and in violation of Miss. Code Ann. §41-29-139(a) and (b) (1) (supp. 1982), and sentence by the circuit court of Pearl River County to imprisonment for twenty years and a fine of $30,000.00.

He assigns only one error, that the circuit judge erred in not conducting an evidentiary hearing on whether his oral confession was voluntary.

When the state was presenting its case in chief, the deputy sheriff of Pearl River County testified to an oral statement made by moreno, after he given Moreno the standard Miranda warning. No objection was made to this testimony. This statement admitted guilt.

After the State rested, Counsel for Moreno asked the circuit judge to conduct an evidentiary hearing on the nature of the confession. The trial court ruled the confession had already been admitted without objection, but he would afford Moreno an opportunity to testify as to the statement being involuntarily given. Moreno declined this offer.

There is no merit in the assignment.

AFFIRMED.

PATTERSON, C. J., WALKER, P. J., ROY NOBLE LEE, P. J., DAN LEE, PRATHER, ROBERTSON, SULLIVAN AND ANDERSON, JJ., CONCUR.

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MANUEL MORENO — APPELLEE

VERSUS — NO. 54,842

STATE OF MISSISSIPPI — APPELLANT

Received and Filed
July 16, 1985

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that MANUEL MORENO, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of this Honorable State Court affirming his conviction June 5, 1985 and a Petition entered on or about approximately June 5, 1985 and a Petition for Rehearing properly filed and denied on or about July 10, 1985.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph 3.

Dated July 15, 1985

DAVID OLIVER

CERTIFICATE

I, David Oliver, do hereby certify that I have this date mailed a true and correct copy of the foregoing Notice of Appeal to the Supreme Court of the United States to Honorable Marvin White, Assistant to the Attorney General of the State of Mississippi 39205, postage prepaid.

This the 15 day of July, 1985

DAVID OLIVER

IN THE SUPREME COURT OF MISSISSIPPI
NO. 54,842

Wednesday, July 10, 1985, Court Setting : : : : :

MANUEL MORENO

54,842 v

STATE

This cause this day came on to be heard on Petition for Rehearing and this Court having sufficiently examined and considered the same en banc and being of the opinion that the same should be denied doth order that said petition be and the same is hereby denied.